

Mahatap Dasi Vs Madhu Sudan Saha and Another

Court: Calcutta High Court

Date of Decision: Aug. 12, 1919

Citation: 64 Ind. Cas. 712

Hon'ble Judges: Teunon, J; Abdul Majid, J

Bench: Division Bench

Judgement

1. This appeal is directed against an order made by the District Judge of Murshidabad. The suit out of which this appeal arises was clearly of the

nature cognizable by Courts of Small Causes and the value of the subject-matter of the suit does not exceed 500 Rupees.

2. A preliminary objection was, therefore, taken that no second appeal lies. That objection is well-founded. On the other hand, it is clear that the

proceedings have been wholly misconceived and that the Court which tried the case in the first instance, by virtue of the provisions of Section 16 of

the Provincial Small Cause Courts Act, had no jurisdiction to do so. We are entitled in the exercise of our discretion to treat this second appeal

preferred to this Court as an application in revision. Treating the appeal as an application in revision, we set aside the orders made in both the

Courts below and direct the Court of first instance now to return the plaint to the plaintiff for presentation to the Small Cause Court having

jurisdiction in the matter.

3. The defendant in the suit raised this question of jurisdiction and subsequently waived it. We consider that both parties are equally responsible for

this misconceived litigation. We, therefore, direct that each party will bear his own costs in all the three Courts.